

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	
)	

**REPLY COMMENTS OF THE
NEW JERSEY DIVISION OF THE RATEPAYER ADVOCATE**

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I. INTRODUCTION.

The New Jersey Division of the Ratepayer Advocate (“Ratepayer Advocate”) hereby responds to the initial comments submitted in the proceeding of the Federal Communications Commission (“FCC” or “Commission”) concerning the request by the Federal-State Joint Board on Universal Service (“Joint Board”) for comments regarding proposals to reform the high cost fund.¹ Numerous parties expressed widely divergent views in their initial comments on the most appropriate way to modify the high cost fund. Although many parties concur regarding the importance of modifying the high cost fund mechanism, parties disagree about the approach, the time frame for implementing changes, and the jurisdiction of the states and the FCC over universal service fund (“USF”) allocations. Moreover, a consensus appears to have developed that the Commission should address the issues brought forth by the Joint Board on a broader basis, in the context of other pressing issues, such as related universal service concerns (*e.g.*, declining subscribership, the contribution base for

¹/ The Ratepayer Advocate submitted initial comments on September 30, 2005.

universal service, etc.) and intercarrier compensation reform.² The Ratepayer Advocate concurs with NASUCA that the focus of the Commission should first be on addressing the *Qwest II* remand with respect to the definitions of “sufficient” and “reasonably comparable” before it can adequately examine proposals to modify the high-cost fund in any significant manner.³

II. HIGH COST SUPPORT PROPOSALS

None of the proposed plans to reform the high-cost fund have garnered widespread support.

Commenters have failed to adopt a consensus as to the “best” reform proposal, much less express support for any of the plans on an “as is” basis.⁴ Instead, commenters have weighed in regarding the pros and cons of particular elements of all of the proposed plans. The rejection of the plans on an “as is” basis is based on various, and sometimes opposing, concerns. For example, NTCA concludes that “all of the four proposals contain elements that violate the Act's main tenet of ensuring that the universal service mechanism be “specific, sufficient, and predictable.”⁵ Similarly, “OPASTCO is unable to support any of the proposals in the Public Notice as they would all impede the continued achievement of the universal service objectives of the 1996 Act and the Commission in the areas served by rural telephone companies.”⁶

^{2/} For example, SBC expresses concern that this proceeding addresses only high cost support for rural carriers, instead of taking a fresh look at the entire system of universal service. SBC, at 2-3.

^{3/} NASUCA, at 3-5.

^{4/} See, *e.g.*, Sprint Nextel, at 3; NASUCA, at 3; OPASTCO, at 3; CenturyTel, at 5.

^{5/} NTCA, at 2.

^{6/} OPASTCO, at ii.

OPASTCO states that the four proposals under consideration fail to specify what problems they are intended to correct. “Instead, it appears that the primary goal of all of the proposals is to significantly reduce the size and growth of the federal High-Cost program.”⁷ (OPASTCO, at 3). OPASTCO asserts that the emphasis of reform should be on ensuring adequate and affordable service to all. By contrast, NASUCA observes that three of the proposals fail to adequately focus on limiting the size of the USF.⁸ Finally, USTA suggests that there is no reason for the Joint Board to consider changes to the current high-cost fund mechanism at all: “The motivation for making changes to rural high-cost support, particularly those proposed by the Joint Board, is not clear.”⁹

However, other commenters laud the Joint Board members’ and staff’s efforts to address the ever increasing high-cost fund. The Ratepayer Advocate concurs with Verizon’s statement that: “The overall size of the universal service fund is growing to levels that could threaten two of the primary goals of the universal service program: sustainability of the fund, and affordability of telecommunications services for all Americans.”¹⁰ Similarly, as expressed in its initial comments, the Ratepayer Advocate supports Verizon’s proposal that the commission undertake “a fundamental review of the high-cost program and an examination of whether the currently configured program efficiently and effectively meets the requirements of Section 254.”¹¹ Qwest asserts that high cost support is not being spent in an efficient and equitable way. “Indeed, more than seven of every ten

⁷/ *Id.*, at 3.

⁸/ NASUCA, at 3-4.

⁹/ USTA, at 2-3.

¹⁰/ Verizon, at 4.

¹¹/ *Id.*, at 4; Ratepayer Advocate, at 27-28.

dollars in federal high cost support is distributed to these areas. Given that only about one in four rural customers in the nation live in areas served by rural carriers, current high cost support clearly is not being spent in an efficient and equitable manner.”¹²

The Commission should consider the concerns raised by stakeholders that the proposals simply go too far too fast. ACS of Alaska asserts that:

It is the Joint Board’s statutory mandate to recommend only those reforms that preserve and advance universal service in ways that are compatible with advancing technology and evolving market forces. The Notice, however, seeks comment on ideas that would represent giant steps backward in the Commission’s ongoing effort to implement the universal service mandates of the 1996 Act.¹³

Similarly, CenturyTel suggests that “[t]hese proposals would generate only illusory savings and create uncertainty that could be devastating to infrastructure investment in rural communities, which is critical to their economic viability.”¹⁴ NASUCA aptly suggests that, except for the Gregg proposal, the proposals are positing “unjustified radical changes to the fund” and that “the preferred approaches for the FCC are those that improve the current structure without abandoning it entirely.”¹⁵

¹²/ Qwest, at 8.

¹³/ ACS of Alaska, at 2.

¹⁴/ CenturyTel, at 5.

¹⁵/ NASUCA, at 4.

The proposals provide insufficient details with respect to how states would delegate authority to states and there is much opposition to this aspect of the proposals.

Some commenters do support a block-grant type proposal or State Allocation Mechanism (“SAM”).¹⁶ The Maine PUC and Vermont PSB observe that “[a]s universal service currently is defined, it is a federal program aimed at supporting local exchange rates. But those rates are set by state authorities. The FCC has no direct control over those rates, and has not even been able to develop a comprehensive and reliable way to measure and compare local rates.”¹⁷ Qwest also expresses support for the SAM approach noting: “State regulatory commissions are attuned to the local conditions of their states -- the carriers operating in that state, the rate structures of particular carriers, and the unique challenges within the state to maintaining affordable and reasonably comparable rates.”¹⁸ However, the Ratepayer Advocate urges the Joint Board and the Commission to consider NASUCA’s analysis with regard to this rationale. NASUCA convincingly suggests:

It may be that some states are better equipped to determine whether their rural customers’ rates are affordable and reasonably comparable, but many states have lost – through statutory or their own regulatory action – the ability to, for example, order their carriers to perform cost studies. More importantly, many states have lost their ability to require their carriers to lower rates in response to the receipt of federal funds. Of course, the FCC also lacks such abilities with regard to local rates. So, it is not clear what, in this context, the “closeness” of state regulators to customers would produce that is superior to the current system.¹⁹

¹⁶/ Maine PUC and Vermont PSB, at 3; SBC, at 3-4; Verizon, at 11.

¹⁷/ Maine PUC and Vermont PSB, at 3.

¹⁸/ Qwest, at 15.

¹⁹/ NASUCA, at 28.

The Maine PUC and Vermont PSB also suggest that an “advantage of the SAM plan is that it allows state to make judgements about investment incentives . . . states would still be free to allocate support in ways that encourage desirable investment, and this could be an effective strategy to promote more rapid broadband deployment in many rural areas.”²⁰ As the Ratepayer Advocate understands the high cost fund, its purpose to support the provision of basic local exchange service (which is not yet defined to encompass broadband access), and, therefore, the Maine/Vermont points appears tangential. (The Ratepayer Advocate certainly supports broadband deployment in rural areas, and in low- and moderate-income communities, which could be neglected by the deployment plans of incumbent local exchange carriers (“ILEC”), but questions the relevance of high cost fund reform.)

Even those commenters that support the SAM acknowledge that an allocation system similar to block grants has not yet been sufficiently outlined. Even the Maine PUC and Vermont PSB express concern that the SAM must contain a mechanism to “ensure that each carrier receives predictable and sufficient support.”²¹ Verizon concludes that: “To satisfy the federal responsibilities under Section 254, any such block grant program must include strict and specific federal guidelines, and cannot abdicate federal authority over allocation decisions . . . To pass legal muster, any block grant system would still require the Commission to maintain clear oversight and audit authority over the states.”²² As noted by the Ratepayer Advocate and Verizon in initial comments, the proposals still must provide specific details as to the federal guidelines that states would be required to follow

²⁰/ Maine PUC and Vermont PSB, at 4.

²¹/ Maine PUC and Vermont PSB, at 6.

²²/ Verizon, at 11.

before full consideration can be given to the proposals.²³

Many more commenters suggest that a state allocation system is more complicated than the current system with little or no additional benefit. While SBC believes that a state allocation system, as described in the four proposals, may be appropriate, it is concerned that “such a mechanism would result in increased administrative costs and additional litigation over the disbursement of universal service funding.”²⁴ Among other things, the process could result in the Commission being flooded with appeals regarding the states’ methods of allocation. Opponents of the SAM also argue that if a cost-based system remains in place, it may be significantly more simple to apply the system at the federal level and with federal rules instead of applying a complex and “uncertain” system of 50 varying allocation mechanisms.²⁵ BellSouth also expresses its position that maintaining a federal allocation system would be more efficient administratively, and more streamlined, than allowing 51 jurisdictions to determine USF allocations. BellSouth correctly observes that the Commission, as the agency ultimately responsible for USF, “is obligated to ensure that waste, fraud, and abuse within the system are minimized” and that responsibility becomes more complex if it must audit 51 state allocation systems.²⁶

Several commenters oppose the SAM because such a plan would improperly delegate authority to the states in light of the requirements of Section 254.²⁷ BellSouth asserts that “[t]he

²³/ Ratepayer Advocate, at 12; Verizon, at 11.

²⁴/ SBC, at 4.

²⁵/ See, *e.g.*, NECA, at 4; USTA, at 8.

²⁶/ BellSouth, at 5.

²⁷/ AT&T, at 7; Sprint Nextel, at 3, 12; BellSouth, at 3-4; Centennial, at 7; ACS of Alaska, at 4; NTCA, at 5.

Commission is ultimately responsible for the national universal service program and therefore must retain responsibility for allocating federal support.”²⁸ AT&T and Sprint Nextel also suggest that the SAM delegates too much authority to the states. Furthermore, BellSouth argues that the SAM allows states to make adjustments to a carrier’s allocation on a case-by-case basis, potentially leading to overfunding of some eligible telecommunications carriers (“ETC”), and underfunding of others. According to BellSouth, this is contrary to the Section 254 requirement that the federal allocation mechanism be “specific, predictable, and sufficient.”²⁹ Another commenter states: “Centennial firmly believes that the Commission must maintain both legal and operational authority over the process of distributing universal service funds. Proposals to transfer large amounts of money to individual states for distribution to preferred carriers are an invitation to administrative nightmares. Different states will inevitably apply different criteria – or apply purportedly nationally-set criteria in different ways – leading to wide diversity among services in different areas – contrary to the requirements of Section 254.”³⁰ NTCA argues that “Section 254 of the Act does *not* grant state commissions the authority to determine how much federal USF support an eligible carrier will receive. Nor did Congress explicitly direct the Commission to grant states this type of control over the federal universal service support dollars.”³¹

Finally, OPASTCO refers the Joint Board and the Commission to the Joint Board’s own *Second Recommended Decision* in CC Docket No. 96-45 (1998), in which the Joint Board concluded:

²⁸/ BellSouth, at 3.

²⁹/ BellSouth, at 4.

³⁰/ Centennial, at 7.

³¹/ NTCA, at 7 (emphasis in original).

“...we cannot recommend that the Commission adopt [a block grant] mechanism...”³² Furthermore OPASTCO suggests that a block grant system increases uncertainty for rural ILECs, reducing their willingness to invest in infrastructure, and possibly reducing their access to capital markets: “A centralized federal system for calculating support for rural ILECs provides a far greater degree of certainty and stability than every state in the union developing their own system.”³³

The Ratepayer Advocate urges the Commission to reject the use of block grants to distribute high cost funds. The proposals lack sufficient justification for implementing mechanisms that would be so disruptive and complex and yet not clearly improve the present mechanism. As NASUCA observes, the rationale for the proposal is not evident, and there appears to be an assumption in the SAM proposal that “the current mechanism, based on non-rural carriers’ statewide forward-looking costs and on rural carriers’ embedded costs, does not distribute support efficiently *within the state*.”³⁴ NASUCA suggests, and the Ratepayer Advocate concurs, that minor modifications to the current federal system may be more productive in addressing those problems if they do exist.³⁵

The Ratepayer Advocate continues to support the use of a forward-looking cost methodology for all but the smallest rural ILECs.

As the Ratepayer Advocate stated in its initial comments, the Commission determined in 1997 that universal service support for rural carriers should be based on forward-looking costs, and “[r]ural carriers have been amply put on notice that their high cost support would gradually be based on

³²/ OPASTCO, at 8.

³³/ *Id.*, at 9-10.

³⁴/ NASUCA, at 27 (emphasis in original).

³⁵/ *Id.*

economic rather than embedded costs.”³⁶ The Commission concluded that a forward-looking cost methodology “creates the incentive for carriers to operate efficiently and does not give carriers any incentive to inflate their costs or to refrain from efficient cost-cutting.”³⁷ NASUCA also expresses support for the use of forward-looking costs *for those carriers serving 100,000 access lines or more in a state*.³⁸ Similarly, Sprint Nextel supports the development of a forward-looking cost model because it would be more efficient than an embedded cost-based model, and would send better signals to new entrants about the cost of entering markets.³⁹ Furthermore, commenters have suggested that the use of embedded costs rewards inefficiencies and is responsible for at least part of the growth in the high-cost fund.⁴⁰ However, Sprint acknowledges, and the Ratepayer Advocate agrees, that there are problems with current forward-looking cost models: inputs to the cost model vary according to carrier’s size and the cost model must be sufficiently flexible to reflect technological developments.⁴¹

Although the Commission acknowledged that the forward looking cost model that existed in 1997 was not appropriate for rural carriers, it concluded that such a model could be developed to address the unique circumstances of rural carriers.⁴² Much of the opposition to a forward-looking

³⁶/ Ratepayer Advocate, at 5.

³⁷/ *In the Matter of Federal-State Joint Board on Universal Service*, FCC CC Docket No. 96-45, *Report and Order*, FCC Rcd 8776 (1997), at para. 226.

³⁸/ NASUCA, Appendix A at 10-11. “The Commission should expeditiously move to a forward looking cost test for rural carriers with more than 100,000 access lines, but small rural carriers should continue, for now, to have their USF costs based on embedded costs. *Id.*

³⁹/ Sprint Nextel, at 9.

⁴⁰/ BellSouth, at 6; Qwest, at 8-9; Centennial, at 8.

⁴¹/ Sprint Nextel, at 9-10.

⁴²/ *In the Matter of Federal-State Joint Board on Universal Service*, FCC CC Docket No. 96-45, *Report and Order*, FCC Rcd 8776 (1997), at para. 293.

cost model for rural carriers is purportedly due to the current inadequacies in the Synthesis Model in accounting for the unique characteristics of rural carriers. NECA stated that “no concrete proposals have been advanced as to how [the Synthesis Model] of any other model can be adapted in such a way as to target support accurately in [rural] areas.”⁴³ Although supporting forward-looking cost models in principle, carriers such as BellSouth suggest that it is difficult to produce a model that does not skew results for small carriers. USTA asserts that developing an appropriate forward-looking cost model for rural carriers would simply be too time consuming and difficult.⁴⁴ Verizon seems to echo this sentiment when it notes that “any new mechanism should also be straightforward and simple to implement and administer and not rely on the creation of complicated cost models.”⁴⁵ . . . The Commission would better spend its time crafting a simpler, more straightforward funding mechanism, rather than crafting a new model.”⁴⁶ Of course, as the Ratepayer Advocate indicated in its initial comments, the Commission and interested parties have now had almost ten years to address this task. Contrary to other commenters, NASUCA suggests that it is indeed possible to design a forward-looking cost model that would be appropriate for “some or all” of the rural carriers and “it may be that there are now improvements that have been developed in cost modeling that should be considered and be applied to the Synthesis Model.”⁴⁷ The Ratepayer Advocate urges the Commission, based on and learning from its extensive effort in determining a cost model for non-

⁴³/ NECA, at footnote 7; See, also, USTA, at 6.

⁴⁴/ USTA, at 6.

⁴⁵/ Verizon, at 8.

⁴⁶/ *Id.*, at 13-14.

⁴⁷/ NASUCA, at 25.

rural carriers, to devote the resources and effort necessary to identify the appropriate modifications to the inputs and algorithms that would render the cost model appropriate for rural carriers.

Apparently, at least some of these “process” arguments are based on an underlying belief that embedded costs are still the best manner in which to determine support for rural carriers. Commenters have expressed concerns that utilizing anything other than a cost-based allocation system is at odds with the Act’s requirement that universal service support be “specific, predictable, and sufficient.”⁴⁸ NECA asserts that forward looking costs incorrectly disconnect support payments from the ILECs’ booked costs.⁴⁹ ACS and CenturyTel contend that support should be based on an ILEC’s actual costs, and not on a cost model and, contrary to FCC findings, ACS suggests that no model will accurately estimate costs for rural carriers.⁵⁰

USTA asserts that “[t]he use of ILECs’ embedded costs as the basis of support is a time-tested method that has ensured ubiquitous service in rural areas” and has a “record of successful performance.”⁵¹ Yet, USTA provides no evidence of this success and completely ignores previous Commission findings. In fact, comments in this proceeding, outlined below, suggest that many parties take issue with the sufficiency of support even using the current embedded cost methodology. The passage of time, with no apparent serious attempt to develop a forward-looking cost model for rural carriers, ultimately harms consumers to the benefit of carriers.⁵² The Alaska Telephone

⁴⁸/ See 47 U.S.C. Section 254(b)(5). NECA, at 4; BellSouth, at 6; ACS of Alaska, at 11-12; CenturyTel, at 18; USTA, at 6.

⁴⁹/ NECA, at 2-3.

⁵⁰/ ACS of Alaska, at 11-12; CenturyTel, at 18.

⁵¹/ USTA, at 6.

⁵²/ See Ratepayer Advocate, at 12.

Association suggests that support should be based on carrier specific, not ILEC, embedded costs.⁵³ There is merit in this approach and the Commission should consider the issue.

The rate benchmark of 125% included in the Holistically Integrated Package and Universal Service Endpoint Reform Plan is arbitrary and difficult to measure in practice.

The Maine PUC and Vermont PSB support the 125% benchmark stating that it is “reasonable and meets the statutory standard for comparability.”⁵⁴ The Maine PUC and Vermont PSB suggest that any adopted plan must adopt a comparability benchmark: “Ten years after passage of the Telecommunications Act of 1996 and seven months after *Qwest II*, this is not an appropriate time to postpone defining the terms in the Act.” SBC and Qwest also support the benchmark, with SBC noting that an objective rate benchmark is required to achieve the goals of Section 254 of the Act.⁵⁵ Qwest also observes that “[t]o the extent phone rates are unaffordable for low-income customers, the Commission should address that issue by increasing the amount of support that is available through its Lifeline programs.”⁵⁶ Sprint Nextel also supports efforts to create a national rate benchmark and expresses concern that the Commission not subsidize artificially low rates of rural LECs.⁵⁷

However, CenturyTel opposes the use of a benchmark stating that “[t]he Joint Board should not recommend adoption of a rate benchmark that institutionalizes higher rates for rural consumers.”⁵⁸

The Ratepayer Advocate urges Joint Board and the Commission to examine CenturyTel’s

⁵³/ Alaska Telephone Association, at 6.

⁵⁴/ Maine PUC and Vermont PSB, at 5.

⁵⁵/ SBC, at 3.

⁵⁶/ Qwest, at 20-21.

⁵⁷/ Sprint Nextel, at 11.

⁵⁸/ CenturyTel, at 19.

suggestion that adopting such a benchmark would “ensure that the average rural rate would be 25 percent *higher* than the average urban rate”⁵⁹ The Alaska Telephone Association similarly questions whether the 125% benchmark meets the comparable rates provision of the Act.⁶⁰ While it may be appropriate for rural rates to differ from urban rates, none of the proposals have provided sufficient support for the 125% benchmark. The USERP authors suggest that because the rate benchmark is “significantly lower” than the rate-based standard (138%) remanded by the Court in *Qwest II* that it would pass judicial muster.⁶¹ Nonetheless, the choice of 125% appears arbitrary.

While the 125% benchmark may require some fine tuning, the Ratepayer Advocate agrees with the comments of the Maine PUC and Vermont PSB that “HIP correctly recognizes that any new universal service plan proposed at this time should include some basis to predict that it is likely to produce sufficient support to achieve reasonably comparable rates.”⁶²

There is significant disagreement as to whether the high-cost fund has grown too large, the reasons for such growth, and the correct way to address problems related to the funding of competitive ETCs.

As noted by the Ratepayer Advocate in initial comments: “the tripling of the high cost fund (costs which consumers ultimately bear) during a period of declining costs in the telecommunications industry is troubling.”⁶³ USTA asserts that rural ILECs receive no more support than necessary, and that the current level of support is “absolutely necessary for building, maintaining, expanding and

⁵⁹/ *Id.*

⁶⁰/ Alaska Telephone Association, at 5.

⁶¹/ *Public Notice*, at Appendix D, footnote 12.

⁶²/ Maine PUC and Vermont PSB, at 10.

⁶³/ Ratepayer Advocate, at 11.

improving their networks, over which they operate as the carriers of last resort, providing basic and advanced services for consumers in their service areas.”⁶⁴ However, Verizon notes that “funding to rural carriers under the rural high-cost fund grew approximately 25 percent from 1999 to 2004 . . . Under the current funding mechanism, there is little incentive for high-cost rural carriers to control costs, because as their costs increase, so do their universal service subsidies.”⁶⁵

Many commenters suggest that the majority of growth in the fund is directly attributable to payments to competitive ETCs, as opposed to increases in ILEC costs.⁶⁶ NECA notes that it presented data in response to the Joint Board’s 2004 Public Notice “showing that the majority of the fund growth at that time could not be attributed to increases in costs among rural rate-of-return ILECs but were instead associated with growth in payments to CETCs.”⁶⁷ Verizon notes that in 2000, \$1 million in high-cost subsidies went to competitive eligible telecommunications carriers (“CETC”) and in 2004 the subsidies for CETCs had grown to \$333 million.⁶⁸ As noted by Verizon, “subsidies provided to ETCs are generally in addition to, not in lieu of, support provided to the incumbent LECs.”⁶⁹

⁶⁴/ USTA, at 3.

⁶⁵/ Verizon, at 5.

⁶⁶/ NECA, at 6-7; Verizon, at 1, 4-5; Qwest, at 12-13; OPASTCO, at 15-16; NASUCA, at Appendix A, page 12; CenturyTel, at 3.

⁶⁷/ NECA, at 6.

⁶⁸/ Verizon, at 4.

⁶⁹/ *Id.*, at 5.

Verizon suggest that the Commission “solve” the problem by limiting funding to one carrier per study area.⁷⁰ The Ratepayer Advocate disagrees. The Ratepayer Advocate does concur with NECA that “corrective efforts should be directed towards rationalizing CETC payment methodologies”⁷¹ but also continues to urge the Commission to examine fully the possible multiple reasons for growth in the high cost fund.

OPASTCO concludes that the Joint Board “should focus its attention on the root cause of the growth - competitive ETCs, and in particular, the Commission's rules permitting them to receive the rural ILEC's identical per-line support, based on the ILEC's embedded costs.”⁷² OPASTCO suggests instead that payments be based on CETCs own costs.⁷³ NASUCA also proposes that the Commission base CETC support on the CETC’s own costs, not the cost of the ILECs and also consider capping the support at the ILECs’ costs. NASUCA suggests that “if the CETC’s cost is higher than the ILEC’s, support at the CETC’s cost would be subsidizing competition.”⁷⁴ The Ratepayer Advocate supports NASUCA’s approach, and disagrees with CenturyTel’s suggestion to move CETC funding to a separate capped fund with its own distribution mechanism.⁷⁵ However, the Ratepayer Advocate does support the suggestion of many, including CenturyTel, that “[t]he rules should permit distribution of support to CETCs only upon a showing of actual costs incurred, as is the case with

⁷⁰/ *Id.*, at 9.

⁷¹/ NECA, at 7.

⁷²/ OPASTCO, at 15-16.

⁷³/ *Id.*, at 6.

⁷⁴/ NASUCA, at Appendix A, page 13.

⁷⁵/ CenturyTel, at 4.

ILECs today.”⁷⁶ Furthermore, NTCA may be correct that “[t]he identical support rule provides CETCs with the same per-line support regardless of their cost structure and defeats the Commission’s guiding principle of “competitive neutrality” ... The rule permits CETCs to receive ILEC per line support for every working loop they serve in the ILEC’s service area, regardless of whether the CETC’s costs to provide service are below the national benchmark to qualify for support.”⁷⁷

The competitive and technology neutral policies of the Commission should be maintained in the adoption of any of the proposals by the Joint Board and the Commission.

Wireline carriers, wireless carriers and urban and rural consumers all have different interests and concerns relative to the Portability Fund for wireless carriers proposed as part of the USERP. USTA, for example, argues that “[c]reating separate funds such as this would unnecessarily divide the total amount of support with the resulting possibility that necessary support for wireline networks may not be available.”⁷⁸ The Maine PUC and Vermont PSB, on the other hand, support USERP’s plan to extend wireless service in unserved areas: “This approach recognized that buildout of wireless networks to rural areas should be a supported national goal.”⁷⁹

However, significant issues with respect to the Commission’s mandate to adopt policy that is competitively and technological neutral must be addressed. Sprint Nextel cites the *First Report and Order*, finding that universal service support should “neither unfairly advantage nor disadvantage one provider over another, and neither unfairly favor nor disfavor one technology over

⁷⁶/ *Id.*, at 10.

⁷⁷/ NTCA, at 12.

⁷⁸/ USTA, at 9.

⁷⁹/ Maine PUC and Vermont PSB, at 11. See, also, OPASTCO, at 17-18.

another.”⁸⁰ Sprint Nextel argues that the Joint Board should not discriminate against certain technologies of competitors. Sprint Nextel claims that a separate fund would lock it into the position of being a net contributor to the Fund for at least five years. Furthermore, Sprint Nextel claims that this proposal is not sufficiently technology neutral, as it imposes additional restrictions on wireless carriers that do not exist for wireline carriers.⁸¹ NASUCA also questions whether the approach passes the neutrality test: “One wonders, however, about the lawfulness – or at the very least, appropriateness under the Commission’s ‘competitively and technologically neutral’ policy – of a universal service program limited to a single type of carrier.”⁸²

Significant obstacles complicate the adoption of a single support mechanism for carriers of all sizes.

USTA asserts that no changes to the definition of a rural telephone company are necessary. USTA further contends that the modifications of the high-cost mechanism contained in the proposals are aimed at reducing the size of the high-cost fund and would “likely place many carriers at risk of not receiving sufficient support to be able to provide universal service.”⁸³ On the opposite end of the spectrum, the Maine PUC and Vermont PSB have repeatedly argued that classification of carriers by rural vs. nonrural or company size harms consumers⁸⁴ and suggest here that “[a]ll four of the plans correctly recognize the desirability of moving to a single unified system.”⁸⁵ In the middle, Verizon

⁸⁰/ Sprint Nextel, at 4.

⁸¹/ Sprint Nextel, at 5-6.

⁸²/ NASUCA, at 31, citing *First Report and Order*, at paras. 48-49.

⁸³/ USTA, at 4.

⁸⁴/ Rural customers in Maine and Vermont are served by non-rural providers. Maine PUC and Vermont PSB, at 2.

⁸⁵/ *Id.*

supports the proposal by Joint Board Member Billy Jack Gregg and suggests that “the Joint Board should recommend that the Commission immediately transition carriers with more than 100,000 lines in a state to the same basis of high-cost support as non-rural carriers, and freeze per-line support to both rural ILECs and other eligible telecommunications carriers (“ETCs”).”⁸⁶

ACS of Alaska and NTCA oppose the Gregg proposal that support be discontinued for those carriers serving more than 100,000 lines,⁸⁷ as does CenturyTel, arguing:

The Joint Board should recommend elimination of the FCC rule that dramatically reduces high-cost loop support to study areas reporting more than 200,000 working loops. Serving rural customers is infrastructure intensive. The size of the carrier serving a rural study area in no way changes the characteristics of that study area. The total number of loops in a rural study area has no impact on the costs of serving long loop lengths, sparsely populated study areas, and long backhaul distances, that are typical of rural study areas.⁸⁸

OPASTCO urges the Commission to reject statewide averaging. According to OPASTCO, because a state's average costs are generally determined by large, non-rural ILECs, use of statewide averaging will jeopardize small and medium-sized rural ILECs.⁸⁹ OPASTCO contends that carriers serving rural, low-density areas have substantially different needs than those serving urban areas: “Treating rural telephone companies and non-rural carriers the same in the distribution of high-cost support fails to consider the unique challenges that rural ILECs face in the provision of service.”⁹⁰ NASUCA expresses similar concerns, noting that the “HIP would do away with the distinction

⁸⁶/ Verizon, at 2-3. *See, also*, SBC, at 3-5.

⁸⁷/ ACS of Alaska, at 10-11; NTCA, at 13.

⁸⁸/ CenturyTel, at 14.

⁸⁹/ OPASTCO, at 11-12.

⁹⁰/ *Id.*, at 13.

between rural and non-rural carriers, and would base all support on statewide average costs. NASUCA objects to both, as they unreasonably mask the differences among carriers.”⁹¹

Multiple study areas within a state should be consolidated.

NECA and USTA argue that economies of scale are often not achieved over multiple study areas served by the same carrier.⁹² “Many commonly-owned study areas within a state are separated by long distances and rugged terrain, and operate substantially in stand-alone fashion.”⁹³ Furthermore, USTA claims that consolidation will deter acquisition of study areas because areas would be forced to be consolidated, resulting in decreased support,⁹⁴ that multiple study areas work well, and that the proposed combination is just “another misguided attempt to reduce the size of the Fund.”⁹⁵

Verizon, by contrast, supports short-term steps to control the size of the fund contained in the proposals including that proposal to consolidate study areas:

Many existing study areas of rural carriers consist of collections of smaller, noncontiguous areas. Despite the scattered nature of these exchanges, they are part of a single geographic unit for purposes of determining average loop cost and universal service support. There is no evidence to suggest that the same statewide determinations would not be equally effective for those carriers currently operating in multiple study areas through acquisition within a state. The failure to require consolidation in those instances potentially rewards in a discriminatory manner those carriers that acquired rural properties

⁹¹/ NASUCA, at 12.

⁹²/ NECA, at 6; USTA, at 5. *See, also*, ACS of Alaska, at 9.

⁹³/ NECA, at 6.

⁹⁴/ USTA, at 6.

⁹⁵/ *Id.*, at 5.

subsequent to the study area freeze.⁹⁶

AT&T and the Ratepayer Advocate concur that consolidation of study areas within a state reflects economies of scale and efficiency of each carrier, and ensures, as AT&T notes, “that local switching support goes only to truly small carriers that cannot obtain such efficiencies.”⁹⁷

A freeze in per-line support is a reasonable approach to improving the high cost mechanism.

Joint Board Member Gregg’s plan includes freezing the per line support for the incumbent upon competitive entry for those rural study areas continuing to use embedded costs.⁹⁸ USTA, NTCA, and the Maine PUC and Vermont PSB, among others, do not support a freeze of per line support upon competitive entry.⁹⁹ The Maine PUC and Vermont PSB suggest that the freeze “has significant disadvantages and may not comply with existing law.” For example, the Maine PUC and Vermont PSB suggests that formulas that are frozen cannot respond to mitigating circumstances such as natural disasters. Also, “[s]upport limited by a per-line freeze amount may not provide sufficient support to maintain affordable and reasonably comparable rates as incumbent carriers lose lines to direct retail competitors and lose toll and access minutes to competing technologies.”¹⁰⁰

⁹⁶/ Verizon, at 15, footnote 21.

⁹⁷/ AT&T, at 3.

⁹⁸/ *Public Notice*, at Appendix B, page 8.

⁹⁹/ USTA, at 8; NTCA, at 11; Maine PUC and Vermont PSB, at 8.

¹⁰⁰/ Maine PUC and Vermont PSB, at 8.

The Ratepayer Advocate, however, agrees with Gregg and other commenters that a freeze is necessary to keep the high-cost fund from reaching levels that are simply not sustainable.¹⁰¹ Verizon suggests that such a freeze “could provide a more tenable long-term solution to overall fund size growth” than the current indexed cap.¹⁰² NASUCA notes that a freeze upon designation of a competitive ETC in a given area, “coupled with limiting support to primary lines, will ensure that the presence of a CETC will not *increase* universal service funding, as is currently the case.”¹⁰³

The Commission should resolve other more pressing concerns before modifying the high cost fund.

Several pressing issues await resolution by the Commission, which, in part, affect the reform of the high cost fund. The resolution of the intercarrier compensation proceeding, which seeks to unify the existing myriad of compensation, could affect universal service requirements. The impact of this parallel proceeding on high cost funds is, itself, unknown and controversial, but potentially significant to this proceeding, depending on the way in which the Commission responds to ILECs’ efforts to guarantee certain levels of revenues in the face of intercarrier compensation reform. The Ratepayer Advocate cautioned against intercarrier compensation reform generating a revenue windfall for incumbent local exchange carriers: “These proposals (and others which seek to shift the recovery of revenues now yielded by various intercarrier compensation regimes to end users) share a common flaw. There is no evidence to support the implied assumption that carriers’ present

¹⁰¹/ *Public Notice*, at Appendix B, page 9. See, also, AT&T, at 3; NASUCA, at Appendix B, page 2; Sprint Nextel, at 8; Verizon, at 14.

¹⁰²/ Verizon, at 10. Verizon is also advocating a freeze on all high-cost support as opposed to “upon competitive entry.” See, Verizon at 10, 14.

¹⁰³/ NASUCA, at Appendix B, page 2.

revenue stream should be guaranteed.”¹⁰⁴ However, until the Commission issues a decision in CC Docket 01-92, it would be premature to modify high cost funding mechanisms.

Others express similar points. USTA contends that any proposal should recognize that changes will occur to intercarrier compensation regime.¹⁰⁵ AT&T also encourages the Commission to consider the four proposals in light of the intercarrier compensation proceedings. AT&T finds that only the “three stage” proposal of Mr. Gregg adequately reflects the importance of not interfering with intercarrier compensation reform.¹⁰⁶

The Ratepayer Advocate also concurs with AT&T that none of the four proposals include sufficient detail about how block grants to the states would work.¹⁰⁷ Furthermore, even if the Commission contemplates the use of block grants, “[v]arious intercarrier compensation reform proposals contemplate additional funding from the federal USF, but if the Commission is simultaneously considering universal service reform that may include these amounts in some sort of block-grant program, it will be virtually impossible to gain agreement on the distribution of that intercarrier compensation in the first place.”¹⁰⁸ Also, as stated above, the Ratepayer Advocate is skeptical about the merits of a block grant approach because it would create new administrative burdens, regulatory uncertainties, and political pressure without sufficient potential for offsetting benefits.

¹⁰⁴/ Ratepayer Advocate Reply Comments, CC Docket 01-92, at 14.

¹⁰⁵/ USTA, at 11.

¹⁰⁶/ AT&T, at 2.

¹⁰⁷/ *Id.*, at 6.

¹⁰⁸/ *Id.*, at 7.

Another pressing issue that merits the Commission's attention is the need for other telecommunications technologies to contribute to the achievement of the nation's universal service goals. Increase in the use of VoIP and IP networks demands immediate attention to the contribution methodology.¹⁰⁹ As CenturyTel suggests, the Joint Board should recommend immediate action to expand the contribution base for universal service to include all service providers that use our national telecommunications infrastructure, now and in the future.¹¹⁰ The Ratepayer Advocate, however, does not concur with CenturyTel's proposal for replacing revenue-based contribution methodology with connections-based methodology, although the Ratepayer Advocate acknowledges that CenturyTel's proposal seeks to mitigate against harm to rural and residential customers in the implementation of such an approach.¹¹¹ CenturyTel at 8-9. The Ratepayer Advocate concurs with NASUCA's statement: "100% of the revenues from [cable modem service and DSL] should be subject to assessment for the federal universal service fund. The same principle applies to VoIP, especially VoIP that touches the public switched telecommunications network." NASUCA, Appendix A, page 9.

Comments also address the number of lines that should be eligible for support. Qwest contends that the Commission should "[l]imit support to one connection per ETC per household."¹¹² Qwest explains further: "Currently, all of an ETC's lines are eligible for high cost support. Thus, if an ILEC provides 100 lines to a business customer or four lines to a residential customer, each of

¹⁰⁹/ Alaska Telephone Association, at 6.

¹¹⁰/ CenturyTel, at 4.

¹¹¹/ *Id.*, at 8-9.

¹¹²/ Qwest, at 7.

those lines can potentially be subsidized through federal high cost support... By supporting a single connection for each subscriber, the Commission would ensure that subscribers in high cost areas continue to have affordable access to supported services, consistent with the principles of section 254(b).”¹¹³ The Ratepayer Advocate also urges the Commission to limit support to a single line per household.

III. CONCLUSION.

WHEREFORE the reasons set forth above and in the Ratepayer Advocate’s Initial Comments, the Ratepayer Advocate recommends that the Commission:

- *Define “sufficient” and “reasonable comparability.”* As a preliminary and critical matter, the Commission should define these key terms, as required by the *Qwest II* remand (see Ratepayer Advocate Initial Comments at 10-11).
- *Address declining subscribership.* Among the universal service issues that merit immediate Commission attention is the reason and remedies for declining telephone subscribership (see Ratepayer Advocate Initial Comments at 25-26).
- *Monitor and address the growing chasm between the technology haves and have-nots.* The Ratepayer Advocate urges the Commission to assess the disparate patterns of broadband deployment and to work with state public utility commissions to ensure that no consumers are left behind.¹¹⁴ (See Ratepayer Advocate Initial Comments at 26-27, which discuss, in part, the patterns identified in the Ratepayer Advocate’s

¹¹³/ *Id.*, at 13.

¹¹⁴/ Federal Communications Commission CC Docket No. 02 23, In the Matters of Appropriate Framework for Broadband Access to the Internet over Wireline Facilities, Report and Order and Notice of Proposed Rulemaking, released September 23, 2005 ("NPRM"), See Statement of Chairman Kevin J. Martin, at 123 and Statement of Commissioner Jonathan S. Adelstein, at 130.

examination of documents in recent merger proceedings, which show low and moderate income communities and rural areas being largely ignored as Verizon deploys fiber to the premises and pursues high-revenue and global customers.¹¹⁵)

- *Design and implement a forward-looking cost model, tailored to high cost characteristics, for large rural carriers.* The Commission should follow through on its long-standing plan to determine high cost requirements for large rural carriers based on a forward-looking efficient cost model.
- *Expand the contribution base.* The Commission should ensure that all providers, regardless of technology, contribute to the nation's achievement of universal service.
- *Targeted support.* High cost funds should support only one line per household.
- *Reject block grant proposals.* Based on the sketchy details that the proposals encompass, the Ratepayer Advocate urges the Commission to reject block grants because they would create new administrative burdens and complexities without apparent offsetting benefits. If extraordinary circumstances so warrant, the Commission can address these situations on an individual case basis.

In summary, the Ratepayer Advocate urges the Commission to address more pressing universal service issues and to resolve the complex intercarrier compensation reform challenge before it modifies the high cost fund. As the Commission modifies the high cost fund, the Ratepayer Advocate reiterates its position that, in the Commission's implementation of the 1996 Act, the

¹¹⁵/ *In the Matter of Transfer of Control filed by SBC Communications Inc. and AT&T Corp.*, FCC WC Docket No. 05-65; *Joint Petition of SBC Communications Inc. and AT&T Corp., Together with its Certificated Subsidiaries for Approval of Merger*, New Jersey Board of Public Utilities Docket No. TM05020168; *In the Matter of Verizon Communications Inc. and MCI, Inc. Applications for Approval of Transfer of Control*, FCC WC Docket No. 05-75; *Joint Petition of Verizon Communications Inc. and MCI, Inc. for Approval of Merger*, New Jersey Board of Public Utilities Docket No. TM05030189.

Commission ensure that consumers are, first of all, not harmed through higher rates or lower service quality, and preferably, are better off as a result of the transition to a more competitive marketplace. As it now stands, mass market consumers are paying higher universal service charges and confronting diminishing opportunities for local competition.

Respectfully submitted,

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